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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,461	11/28/2001	Howard B. Sosin	2002832-0016	2420

7590 10/22/2003

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EXAMINER	
LEGESSE, NINI F	
ART UNIT	**PAPER NUMBER**
3711	11

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/996,461	SOSIN, HOWARD B.	
	Examiner	Art Unit	
	Nini F. Legesse	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 November 2001* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Applicant's response to the office action of 05/28/03 is acknowledged.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-12, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rakowski (PCT WO 01/78851 A1).

Rakowski discloses an artificial turf (page 4, lines 4-9) comprising:

- A substrate (2-6);
- A plurality of fibers protruding from the substrate, wherein the (refer to abstract; page 4, lines 4-8; and page 10, lines 5-10);
- Wherein the chromogen is thermochromic (line 3 of the abstract);
- Wherein the chromogen is stress chromic (refer to the abstract);
- Wherein the chromogen is chemically chromic (refer to the last paragraph of page 4);
- Wherein the chromogen is coated on the surface of the fibers or encapsulated (on page 4 lines 4-8, it is indicated that the fibers could be colored and on page 7 line 22-23 it is indicated that it could be encapsulated);

- Wherein a first and second color are visually distinguishable (page 4, lines 29-30); and
- Wherein the change in color is substantially reversible (page 3, lines 18-26).

Rakowski discloses the invention as recited above he fails to explicitly state if the fibers include a chromogen. However, since Rakowski for example indicates that layers 12 in Fig. 2 is optional (for example refer to page 6, lines 21-22 of the specification), then it is possible that the fibers on layer 11 of one of the embodiments could absorb the chromogen that is being applied to the back of layer 11 as disclosed in the last paragraph of page 7. And also it would have been obvious to one of ordinary skill in the art at the time the invention was made to paint, spray, or apply the chromogen element directly to the fibers of the Rakowski's device in order to reduce the manufacturing cost by reducing the number of parts needed to fabricate the device and improve the color change.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rakowski in view of Johnson, Jr. (US Patent No. 5,394,824).

Rakowski discloses the invention as cited above but fails to include indicia for marking the boundaries of a sports field. However, Johnson discloses indicia for marking the boundaries of a sports field (refer to Fig. 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide any type of indicia on a playing surface as taught by Johnson since it was known in the art that having an indicia for a ball position or an indicia for marking the boundaries of a sports field will help a player because the indicia could be used as a reference point and the presence of an indicia could help a player to visualize his game or practice better.

Response to Arguments

Applicant argues that the claimed invention is taught in the provisional application (60/250,894). However, Applicant's claim of priority to provisional patent application US serial No. 60/250,894 over the Rakowski (PCT WO 01/78851 A1) reference can not be used to give this application the filing date of the provisional because the general term "chromogen" was not present in the provisional application.

Applicant argues that Rakowski does not describe a device in which layer 1 or layer 11 contains the chromogen. However, it is the other embodiment of the Rakowski's reference as shown in Fig. 2 that examiner is trying to convey that chromogen could enter the top layer (11) since item (12) is optional in that assembly as stated on page 6, lines 21-22.

In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on

obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nini F. Legesse whose telephone number is (703) 605-1233. The examiner can normally be reached on 9:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell can be reached on (703) 308-2126. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 872-9301.

Paul T. Sewell
Supervisory Patent Examiner
Group 3700

NFL
10/20/03